a rule, required, *Dauchey v. Drake,* 85 N. Y. 407. If the contract is not performed in accordance with the terms, the retention of the goods after the defect has been discovered is a waiver of the defect. *Titley v. Enterprise Store Co.,* 18 Ill. 457. If the goods are to be delivered in installments, and the vendee on receiving part of the goods retains them, he waives any breach of the contract by the vendor, *Shields v. Pettee,* 2 Land. L. C. R. 262 N. Y., and accepting part of the goods and paying for them will justify the vendor in making subsequent deliveries of goods in accordance with the terms of the contract, *Miller v. Moore,* 83 Ga. 685, but if the vendor cannot deliver goods in accordance with the terms of the contract, any installment which goes to the essence of the contract may be refused by the vendee. *Norrington v. Wright,* 115 U. S. 188. Where there is a contract for the sale of goods deliverable in installments, which are to be paid for on delivery, and the seller makes defective delivery in respect to one installment, or the buyer fails to take delivery of or pay for an installment, the question arises whether the breach gives rise merely to a claim for compensation or to a right to treat the whole contract as repudiated. It is difficult to reconcile the English cases upon this point. Some say it is a breach going to the root of the matter, *Hoare v. Rennig,* 5 Hurl. & U. 19, while the opposite view is upheld in the leading case of *Simpson v. Griffin,* L. R. 8 Q. B. 14. In this country the same conflict arises, but the Supreme Court has held it is such a breach. *Norrington v. Wright, supra.*

SEDUCTION—CRIMINAL PROSECUTION—EVIDENCE—ADMISSIBILITY.—STATE V. BENNETT, 110 N. W. 150 (IA.).—*Held,* that in a prosecution for seduction, the prosecutrix was properly permitted to testify that she yielded her person to the defendant's embraces because of his promises. The disqualification of parties as witnesses in their own behalf being now practically obsolete throughout our land as witnesses they may testify to intent or motive. *Wigmore Ev.,* Section 581. In accordance, it was held no error to ask the prosecutrix if, at the time of her seduction, she believed that defendant would marry her. *Armstrong v. People,* 70 N. Y. 38. And in *State v. Brinkhaus,* 34 Minn. 285, and *Ferguson v. State,* 71 Miss. 805, it was held that prosecutrix might testify that she permitted the intercourse because of the promises of marriage. But the accused may testify in rebuttal that prosecutrix knew he was engaged to be married to a third person. *State v. Brown,* 86 Ia. 121. Probably, in Alabama alone is the prosecutrix not permitted to testify to the motive which induced her to sexual intercourse. *Wilson v. State,* 73 Ala. 527.

SLANDER—WORDS ACTIONABLE PER SE.—BATTLES V. TYSON, 110 N. W. 299 (NEB.).—*Held,* to charge a woman with being a lewd character, of using her body for commercial purposes, and with keeping a gambling room, is actionable, *per se.*

It is not necessary in order to render words actionable *per se,* that they bear criminal import. If the words in their ordinary acceptation, would naturally and presumably be understood as importing a charge of crime, they are *prima facie* actionable. *Stroebel v. Whitney,* 18 N. W. 98 (Minn.). So charging a party with keeping a gambling place is sufficient to charge a crime and so is actionable. *Buckley v. O'Neil,* 113 Mass. 193. In *Ross v. Fitch,* 58 Fed. 148, it was held that words, imputing a want of chastity of a female are not actionable *per se,* but that specific damages

must be alleged and shown. But the common law rule has been greatly modified in many of our states, and words spoken imputing a want of chastity are actionable, *per se,* on the ground that such words tend to hinder her advancement in life, by degrading her in the eyes of respectable people, *Cleveland v. Deitweiler,* 18 Ia. 299. And some of the states have modified the common law rule by statute, making words, implying a want of chastity, actionable *per se. Newman v. Stein,* 75 Mich. 402; *Mason v. Stratton,* 1 N. Y. Supp. 511; *Seller v. Jenkins,* 97 Ind. 430.

TRADE-MARKS—UNFAIR COMPETITION—INJUNCTION—BANZHAF ET AL. V. CHASE, 88 PAC. 704 (CAL.). Without regard to whether plaintiffs have, or can have, a trade-mark in the words "Old Homestead," stamped on bread manufactured by them, the stamping into bread manufactured by the defendants of the words "New Homestead," in letters and words of the same size, style, and arrangement, being for the purpose, and with the result of, appropriating plaintiff's trade, *held* that, the defendant will be enjoined, on the ground of fraud.

The general rule of law applicable to this case is that, where a manufacturer has applied a peculiar and distinctive label to designate his goods, and has so used it that his goods are designated by it, a court of equity will restrain another party from adopting and using one so similar that its use is likely to confusion by purchasers exercising the ordinary degree of caution which purchasers are in the habit of exercising with respect to such goods. *Anheuser-Busch Brewing Ass'n. v. Clark,* 26 Fed. 410. Although plaintiff cannot acquire the exclusive right to use the word "American" as descriptive of beer, yet it is entitled to an injunction where an imitation of its signs, bearing that word conspicuously, so closely resembles theirs in size and colored lettering as to deceive the public. *American Brewing Co. v. St. Louis Brewing Co.,* 47 Mo. App. 14. Where the plaintiff has for a number of years used the word "Portland" to distinguish his stoves from others on the market, a rival dealer will be restrained from advertising and selling a different stove as the "Famous Portland," *Van Horn v. Coogan,* 52 N. J. Eq. 380. In order to constitute an infringement it is not necessary that the imitation should be exact. It is sufficient that there is such a substantial similarity that the public would be deceived. *Cooley on Torts,* (3 Ed.) 732.

TRUSTS—DEPOSITS IN BANKS—DEATH OF BENEFICIARIES—EFFECT.—IN RE UNITED STATES TRUST CO. OF NEW YORK, 102 N. Y. SUPP. 271.—*Held,* that a trust created by a father by his depositing money in a bank in his name, in trust for a son, terminates *ipso facto* on the son's death in the life-time of the father, and thereafter the fund remains the property of the father unimpressed by any trust. Ingraham, J., *dissenting.*

The deposit of funds in a bank in the name of the depositor in trust for another does not thereby create an irrevocable trust. *Matter of Totten,* 179 N. Y. 112; *Clark v. Clark,* 108 Mass. 522. And unless there is some evidence of an intention of so doing, *Ray v. Simmons,* 11 R. I. 266; *Estate of Smith,* 144 Pa. St. 428, the title to the funds remains in the depositor. *Cleveland v. Hampdon Savings Bank,* 182 Mass. 110. Even in those jurisdictions that hold that where the depositor dies before the beneficiary, leaving the trust open and unexplained, the latter is entitled to the deposit, *Martin v. Funk,* 75 N. Y. 134; *Conn. River Savings Bank v. Albee,* 64 Vt. 571, it would seem